

PRINCIPLES OF AGREEMENT
FOR A PROPOSED SETTLEMENT BETWEEN THE UNITED STATES
AND WESTLANDS WATER DISTRICT REGARDING DRAINAGE

I. Introduction

Representatives of the United States and Westlands agree that the terms below should be incorporated into “principles of agreement” for a potential settlement between the United States and Westlands for review by their respective principals and, if appropriate, would form the basis for developing a proposed settlement agreement, with accompanying draft legislation, that the representatives would recommend to their principals for approval. Any settlement agreement resulting from these discussions may contain other provisions or terms as agreed to by the parties.

II. Federal Legislation

A. Legislation enacted by the United States Congress and signed into law by the President would be necessary to authorize and implement a drainage settlement (hereafter “enabling legislation”). Legislative language would be drafted that could be submitted to Congress and that would be attached as an exhibit to a settlement agreement. The United States and Westlands envision that the enabling legislation would:

B. Amend the San Luis Act to relieve the United States and the Secretary of the Interior (“Secretary”) of all obligations under that Act to provide drainage or drainage service to the San Luis Unit of the Central Valley Project (“CVP”), including drainage to the Northerly Area contractors (San Luis Water District, Panoche Water District, and Pacheco Water District). It is understood by Westlands and the United States that addressing the drainage requirements of the Northerly Area contractors is a separate but related discussion.

1. The United States would enter into a separate agreement with districts in the Northerly Area of the San Luis Unit regarding the provision of drainage service to lands in their service area.

C. Provide that, upon enactment, Westlands shall assume legal responsibility for the management of drainage water generated by the irrigation of lands within its boundaries, in accordance with state and federal law.

D. Also provide for the following:

1. Authorize relief for Westlands’ existing capital repayment obligations as described more fully in Part IV(C) below.

2. Authorize relief for landowners within Westlands from the acreage and full-cost pricing limitations of Reclamation law (sections 204 and 205 of the Reclamation Reform Act, Pub. L. 97-293, Oct. 12, 1982).

3. Authorize and direct the Secretary to convert Westlands' existing water service contract into a repayment contract under § 9(d) of the Reclamation Project Act of 1939, under mutually agreeable terms and conditions, conditioned however upon Westlands first securing waivers and releases of all pending and potential claims by individual landowners within Westlands related to the Secretary's drainage obligations, as described more fully in Part VII(C) below.

4. Authorize the Secretary to enter into a water service contract with the Secretary of the Navy for Lemoore Naval Air Station ("NAS") for sufficient CVP water to meet the irrigation needs of the NAS associated with air operations, with the amount to be determined by technical analysis, as described more fully in Part VI below.

III. Cap on Water Deliveries to Westlands

A. Westlands' primary contract deliveries of 1,186,400 acre-feet of CVP water would be capped at 75% of the contract total (889,800 acre-feet).

B. As a term of a settlement agreement and the 9(d) repayment contract referenced in Part IV below, the United States would have the exclusive right to the use of all CVP water made available to Westlands under its contract above 889,875 acre feet for other Project purposes as determined by the Secretary.

IV. Changes to Westlands' Reclamation Contract

A. Conversion to a 9(d) repayment contract. Westlands' existing water service contract, subject to the 75% cap in total contracted water as set out in Part III above, would be converted to a repayment contract under § 9(d) of the Reclamation Project Act of 1939, the terms of which are mutually agreeable to Westlands and the United States and which are expected to be consistent with the existing 9(e) contract provisions, including but not limited to the provisions relating to water to be made available and water shortages.

1. Any such 9(d) contract would be subject to yearly water allocations as set by the Bureau of Reclamation ("Reclamation") and will include Reclamation's current contract shortage provision that will be similar to Article 12 of Westlands 2012 Interim Renewal Contract [14-06-200-495A-IR3].

2. Prior to the execution of a 9(d) contract, all pending and potential claims of individual landowners within Westlands related to the Secretary's drainage obligations would need to be waived, released, or otherwise addressed to the United States' satisfaction (see Part VII below), and enabling legislation authorizing the settlement would need to be enacted by Congress and signed into law.

B. Assumption of drainage responsibility to be a term of a 9(d) repayment contract. Westlands' assumption of legal responsibility for the management of drainage water generated

by the irrigation of lands within its boundaries would be a term of the 9(d) repayment contract. The United States would need to be assured that the drainage obligation undertaken by Westlands is enforceable. In addition, the settlement agreement, as well as the repayment contract, would need to define the liabilities of each party under all state and federal laws.

C. Relief from existing capital repayment obligations. Upon enactment of the enabling legislation and satisfaction of the terms and conditions in Part VII below, Westlands would be relieved of capital repayment obligations associated with the 1963 water service contract (Contract No 14-06-200-495-A) and any renewals thereof, and the 1965 repayment contract.

Such relief would not extend to any of Westlands' O&M obligation. In addition, such capital repayment relief shall not extend to any capital costs associated with the B.F. Sisk corrective action study, the Folsom Joint Federal Project or any other current or future Safety of Dams Act modification, or any capital costs incurred after the date of enactment of the enabling legislation that are appropriately assigned to Westlands.

D. Westlands would agree to continue wheeling water for the Lemoore NAS at the same conveyance charge as other Westlands operators.

V. Land Retirement Within Westlands' Service Area.

A. Westlands would agree to permanently retire approximately 100,000 acres of lands within its service area from irrigation. The land Westlands acquired through the Sumner Peck Settlement and the Sagouspe Settlement would be permanently retired and included as part of the 100,000 acres. Westlands could retire additional land, at its discretion.

B. Westlands would agree that retired lands will be used for management of drain water, construction of renewable energy projects, upland habitat restoration projects, or other uses with the prior approval of the Secretary. Westlands would agree to provide the Secretary with a list of retired lands and a list of the uses to which those lands are put.

VI. Water Service Contract for Lemoore Naval Air Station.

The enabling legislation would provide the Secretary with authority to enter into a water service contract with the NAS for sufficient CVP water to meet its irrigation needs associated with air operations, the amount to be determined by the Secretary of the Interior through technical analysis with the NAS. Water provided by this contract would be expected to have reliability similar to that provided CVP municipal and industrial water contractors.

VII. Resolution of Claims.

A. Dismissal of claims by Westlands. Upon enactment of enabling legislation, and as a condition precedent to the effectiveness of repayment relief (see Part IV(C) above), Westlands would join with the United States in stipulating to the dismissal with prejudice of any and all claims, cross-claims and counter-claims, without limitation, by Westlands against the

United States for drainage or drainage service, including dismissal with prejudice of any appeals involving such claims, including *Westlands Water District v. United States*, No. 2013-5069 (Fed. Cir.).

B. Waiver, release, and abandonment of claims by Westlands and other San Luis Unit contractors. Upon enactment of enabling legislation, Westlands would waive, release, or abandon any past, present, or future claims against the United States arising from the alleged failure by the United States to provide drainage or drainage service. It is anticipated that all other San Luis Unit contractors will provide similar waivers, releases, and abandonment of past, present, and future claims against the United States.

C. Waiver, release, abandonment, and indemnification regarding claims by individual landowners within Westlands. Upon enactment of enabling legislation, and as a condition precedent to the effectiveness of repayment relief, Westlands would provide assurances in a form satisfactory to the United States that the United States shall be indemnified and forever held harmless against any and all claims by individual landowners, including any claims under the Fifth Amendment of the United States Constitution, arising from the alleged failure of the United States to provide drainage or drainage service. In addition, upon enactment of enabling legislation, and as a condition precedent to relief from acreage limitation and full-cost pricing provisions of Reclamation law set forth above in Part II(D)(2), individual landowners within Westlands would waive, release, or abandon all claims against the United States arising from the alleged failure by the United States to provide drainage or drainage service, including any claims under the Fifth Amendment of the United States Constitution arising from such alleged failure or, for those landowners for whom Westlands cannot obtain such waivers, releases, or abandonments of claims, Westlands would take alternative measures, satisfactory to the United States, that would provide the same protection from future litigation as waivers, releases, and abandonment of claims.

D. *Etchegoinberry v. United States*, No. 11-564-L (Fed. Cl.). Upon enactment of enabling legislation, and as a condition precedent to the effectiveness of repayment relief and conversion to a 9(d) contract (see Part IV), the litigation titled *Etchegoinberry v. United States*, No. 11-564L (Fed. Cl.) and currently pending in the United States Court of Federal Claims would be settled as follows:

1. Westlands would agree to intervene and become a party to the case of *Etchegoinberry v. United States*, No. 11-564L (Fed. Cl.), for purposes of settlement. The United States would agree to not oppose Westlands' intervention for the purposes of settlement, but it reserves the right to oppose Westlands' intervention in the event settlement does not become final. It is anticipated that a class action settlement would be the mechanism by which Westlands would pay compensation to drainage-affected landowners within Westlands' service area. The United States and Westlands will not oppose the certification of the class action for settlement purposes only on the condition that the settlement becomes final. The United States reserves the right to oppose class certification if the settlement does not become effective. Assuming Westlands successfully intervenes in the lawsuit outside the context of a conditional

settlement, Westlands reserves the right to oppose class certification if the settlement does not become effective.

2. Whether through a class action settlement in *Etchegoinberry v. United States* or through another mechanism, Westlands would compensate affected landowners within Westlands' service area, including landowners who are parties to existing litigation, for any harms to land within Westlands' service area caused by the alleged failure of the United States to provide drainage or drainage service.

VIII. Termination of Injunctions Directing the United States to Provide Drainage Service.

Upon enactment of legislation amending the San Luis Act as described above (and consistent with the terms of any settlement agreement), Westlands and the United States would jointly petition the court in *Firebaugh Canal Water Dist. v. United States*, CV-F-88-634-LJO/CV-F-91-048-LJO (E.D. Cal.) under Fed. R. Civ. P. 60(b)(5) to vacate that court's 2000 Order Modifying Partial Judgment and all orders requiring the United States to provide drainage service to the San Luis Unit of the CVP.

IX. General Provisions of a Proposed Settlement Agreement.

A. Any proposed settlement agreement reached by negotiators for the United States and Westlands would be subject to approval by the U.S. Department of Justice and the U.S. Department of the Interior before it could be agreed to on behalf of the United States, and approved by the Westlands Board of Directors and agreed to on behalf of Westlands. The binding effect of any such settlement agreement would be contingent upon the enactment of enabling legislation.

B. The proposed settlement agreement would contain standard provisions regarding the federal budget process, Congressional approval of appropriations, Anti-Deficiency, novation and amendments, and other standard provisions acceptable to the United States. The settlement agreement would also provide that implementation of any settlement shall be subject to all applicable federal and state laws, including NEPA, CEQA, the ESA, and the Porter-Cologne Water Quality Act as appropriate.

C. Any such settlement agreement would be intended to bind any and all future successors and/or assigns of Westlands.

X. General Provisions of These Principles of Agreement.

A. As part of this settlement negotiation process, the United States and Westlands would brief their respective principles, stakeholders, and interested parties, and members of Congress.

B. Neither these Principles of Agreement nor any part thereof shall be construed as admissions against interest or be used in any legal or regulatory proceeding by Westlands or the United States against Westlands or the United States. The United States and Westlands agree that any documents, analysis, and positions shared in negotiating these Principles of Agreement are protected from subsequent dissemination to the full extent under Federal Rule of Evidence 408. This paragraph is binding on the United States and Westlands and survives the termination of these Principles of Agreement.

C. Except for Part X(B) above, the United States and Westlands agree that there are no binding obligations or commitments contained in these Principles of Agreement and that these Principles of Agreement do not constitute a settlement agreement or a contract. There shall be no remedy for any potential or alleged breach of these Principles of Agreement, and neither the United States nor Westlands shall be subject to specific performance, damages, or any other remedy or type of relief, in law or in equity, for failure to perform any of the provisions of these Principles of Agreement. □đ